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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,356	06/27/2003	Alan Brandt	4137-129	8212

7590 12/15/2005
Insect Biotechnology INC
P O Box 2311
Chapel Hill, NC 27709

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/609,356

Applicant(s)

BRANDT ET AL.

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/15/03.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"combating" is indefinite-when, how or what is the parameter, unidentified as combatted, achieved? Claim 3,4 is "contained" intended rather than "containing" ?

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claim 1-3, 5, 6, 11-14, 22 are ----

rejected under 35 U.S.C. 102(b) as being anticipated by (Horai et al-3,785,798)

A package, barrel, contains 2-undecanone (Table III and column 5, lines 22-37).

Insecticidal repellent activity is seen. The instant claims to combatting, to specific life stages, are not given patentable weight, as future intended use of the claimed structure containing undecanone. The effects claimed flow from the nature of the undecanone, they are inherent..

Claim 1-8, 11-14, 22 -- rejected under 35 U.S.C. 102(e) as being anticipated by Roe-6437001

The instant combating agents are well known (column 1) and are shown effective when applied to containers (column 2, lines 7-33,) against insects (Example 2). Webs or films of cellulose material (polymeric) cloth, can be impregnated (Example 1) and protect hands subject to insect (mosquito) attacks, contained therein (Examples 1, 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over.

Lasversanne et al 5788975 and Bigg et al 67073)

Laversanne: Insect combatting (Column 4, lines 34-61) undecanone at 0.01-250 grams/liter (column 5, top) or less can be encapsulated (column 5) and then applied.

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Example 5-efficacy in fabric is shown, and in bottles (packages) (column 9). Cosmetics also can be packaged (column 4) as they must be, containing the active.

Bigg show incorporation of the undercanone into polymers, at 5-50 % (column 17, lines 34-53) of copolymer of polyethylene (column 17, bottom) and PVC. These are used to produce packaging materials)column 3, bottom) of food or feed-milk (column 4, top) or meat, or drugs (column 4, lines 28-48) and made by extrusion, molding and casting.

Since Laversanne shows multiple efficacy, it would be obvious to provide undecannone as plasticizer in preparation of packages of Bigg, in order to provide biodegradable packages that prevent insect deprivations. The packaging can be used to contain anything.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a protected feed additive or drug to use one of Laversanne modified with Bigg's method of polymer use in order to provide acceptable application and protection. The selection of each ingredient & packaging material & method is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired.

There is no unobvious and/or unexpected results obtained since the prior art is well aware of the use of packaging materials to hold feed or food or drugs or cosmetic compounds for enhancement and protection, & the use of ingredients for the functionality for which they are known to be used is not a basis for patentability.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619.

The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN PAGE can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NEIL LEVY
Primary Examiner
Art Unit 1615
